IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 26

ALLEN POPE,

Petitioner,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF OF JOHN W. CRAGUN, AMICUS CURIAE

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Statement

Undersigned, the *amicus curiae*, files this brief (with leave of the Court and with the permission of counsel for the petitioner and respondent in the above case) by reason of counsel's interest in cases pending are to be filed in the Court of Claims pursuant to special jurisdictional acts. Some of these special jurisdictional acts direct the Court of Claims to enter a specified judgment in the event stated facts are found by that court. The ground of the parties' contentions in this Court have been broadly enough taken

that, should the Court accept some of the theses advanced, the validity of other jurisdictional acts with which the *amicus* is concerned may be threatened.

Argument

This brief passes without comment the rather mild effect which may be attributed to the jurisdictional act under which the litigation was commenced below (Act of February 27, 1942, c. 122, 56 Stat. 1122). This brief deals rather with the most serious view which could be taken of that legislation—that Congress has directed the Court of Claims to enter a judgment for a claimant in that court, in a case which the court had previously ruled against the claimant. And this brief assumes [1] that the court below exercises only the purest of judicial power, and cannot in any case be treated differently than could a district court of the United States. Thus taken, the special jurisdictional act is not unconstitutional.

Reduced to its simplest, this case is merely one where two parties have agreed that a previous judgment settling their differences should be reopened, and a new judgment should be entered to be calculated on agreed facts. Petitioner has agreed by suing under the new jurisdictional act. Respondent has agreed through that agency, the Congress, to which the Constitution confides the determination of whether such a settlement is proper. And until the decision below, it has never been questioned to the knowledge of the *amicus* that

[1] The assumption is merely *arguendo*. Counsel signing this brief wholly disagree with the conclusions of counsel for respondent that *Williams* v. *United States*, 289 U. S. 553, is an error in finding a distinction between a "constitutional" and a "legislative" court, and that all are Article III courts, except, perhaps, as to the doctrine of legislative courts as applied to territories" (Brief for the United States, p. 106). The point need not be developed; for if the court here in dispute is valid as to a constitutional court, *a fortiori* it binds a court the mere creature of Congress, of which there be.

a court in entering a judgment upon such a consent or stipulation was not exercising judicial power, or that the parties in submitting such an arrangement were not permitting the court "with independence and single-mindedness to justice" to perform "the responsible and dignified function of doing justice" for which it was created. (Quotations are from the opinion below, 100 C. Cls. 375, 384.)

Time out of mind, private parties defendant have consented to a judgment, or have confessed judgment, or have stipulated facts, or submitted cases on an agreed statement of facts. The common law was well acquainted with the writ of *cognovit actionem*, whereby a defendant confessed judgment as to part or all of an action. 3 BLACKSTONE, *Commentaries*, p. 397. So far as counsel is aware, it has never been suggested that a defendant, so consenting or confessing, has been considered to subject the court's decision to his mere will (opinion below, 100 C. Cls. at p. 387), or interfered with the court's "desire only to be permitted to act as a court" (opinion below, 100 C. Cls. at p. 388). Rather, "Parties to a suit have the right to agree to any thing they please in reference to the subject-matter of their litigation, and the court, when applied to, will ordinarily give effect to their agreement, if it comes within the general scope of the case made by the pleadings." *Pacific R. R.* v. *Ketchum*, 101 U. S. 289, 295.

The fact is, of course, that a judgment entered pursuant to agreement of the parties is just as much a final pronouncement of the court, with all the implications of *res judicata*, and all the rights to its enforcement, which attend any other judgment. "The same general rules which govern judgments generally apply to a judgment by consent or upon stipulation. It is an estoppel, merger or bar under the same circumstances and to the same extent as any other judgment, ..." 2 FREEMAN, *Judgments* (1925),

§ 663, pp. 1395-6. "A decree for carrying out a settlement and compromise of a suit is certainly not, of itself, erroneous. When made by consent, it is presumed to be made in view of the existing facts, and that those were in the knowledge of the parties. In the absence of fraud in obtaining it, such a decree cannot be impeached." *Thompson* v. *Maxwell*, 95 U. S. 391, 397; cf. *Harding* v. *Harding*, 198 U. S. 317, 335 (referring to Illinois law).

The fact that a case between the parties has previously been reduced to judgment makes no difference. In the first place, if an entirely new action be instituted, it is necessary for the parties to plead *res judicata* in bar of the second suit or else that second suit will go to judgment, and itself become the bar. *Brown* v. *Campbell*, 177 U. S. 649, 654-5; *cf.* Rule 8(c), RULES OF CIVIL PROCEDURE. The court is not put upon by a party's failure to plead the earlier judgment.

In the second place, if the suit is not a new suit but the reopening and setting aside of the former judgment so that a new judgment, by consent, can be reached, still the parties may agree to it. "The rule which prevents the court from interfering with its judgments entered at terms which have passed can have no application to orders or judgments entered by the express consent and agreement of all parties interested." *Sheridan* v. *City of Chicago*, 175 Ill. 421, 51 N. E. 898; 1 FREEMAN, *Judgments* (5th ed.), § 142, note 2.

The mere fact that a court has only a routine step to take does not make its action non-judicial in character. In the ordinary case, the court has no discretion to rule improperly upon the ultimate case presented; and if it reach an erroneous judgment, it is corrected on appeal. *Ex parte Rosier* (App. D. C., 1942), 133 F. 2d 328, 330. Even with respect to those administrative matters where the court exercises "discretion", it need not follow that there are at

least two ways in which it may rule without committing error; there may be only one way in which the discretion may be exercised. Cases in which it has been held an abuse of discretion to rule in one of the only two ways which are open are exemplified by *Langnes* v. *Green*, 282 U. S. 531, and *Cornwell* v. *Cornwell* (1941), 73 U. S. App. D. C. 233, 118 F. 2d 396, 398-9. (Cf. *Arenas* v. *United States*, No. 463 O. T. 1943, U. S. Sup. Ct. (decided May 22, 1943), citing *Perkins* v. *Elg*, 307 U. S. 325, 349.) And notwithstanding the court properly can rule in only one way, it has never been supposed that the court in acting in the only way permitted does not exercise judicial power.

It follows that the only constitutional question of possible substantiality is whether the United States has actually consented, through the proper agency, to the judgment sought by petitioner. Petitioner properly appealed to Congress; and its action in adopting the jurisdictional act, thereby consenting on the part of respondent, is constitutional. This Court ruled in *United States* v. *Realty Company*, 163 U. S. 427, 440-441:

> "Under the provisions of the Constitution (article 1, section 8), Congress has power to lay and collect taxes, etc., 'to pay the debts' of the United States. Having power to raise money for that purpose, it of course follows that it has power when the money is raised to appropriate it to the same object. What are the debts of the United States within the meaning of this constitutional provision? It is conceded and indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term 'debts' includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general

principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. To no other branch of the government than Congress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. Their recognition depends solely upon Congress, and whether it will recognize claims thus founded must be left to the discretion of that body. Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral obligation to support them, have been made by the government by virtue of acts of Congress, appropriating the public money, ever since its foundation. Some of the acts were based upon considerations of pure charity."

Previously, the court below recognized this doctrine as to cases where Congress did not pay a claimant directly, but referred the claimant to the court. In *Garrett* v. *United States*, 70 C. Cls. 304, 315, it ruled:

> "If Congress has the power to pay these claimants by making an appropriation out of the Treasury, it seems it would undoubtedly have the authority to enact a statute recognizing such moral obligation, assume liability for its payment, and vest the court with authority to hear and adjudicate such claims and to enter judgment in favor of those to whom the money belongs. The claimants in either case would receive their money by virtue of an act of Congress."

Or, *Edwards* v. *United States*, 79 C. Cls. 436, 445—

> "The authority of Congress to prescribe the basis on which a claim shall be adjudicated, that is, to pre-

scribe the conditions under which a citizen may be compensated for losses suffered under a contract, or even where no contract exists, or to create a liability on the part of the Government where no legal liability in fact exists and to waive any legal defense on the part of the Government, is no longer subject to question."

A previous case in this Court, fully as serious as the present, evinced no doubt by respondent, by this Court or by the court below as to the power of Congress even after final judgment of the court below and its affirmance here. *United States* v. *Klamath and Moadoc Tribes*, 304 U. S. 119; earlier case, 296 U. S. 244. There, after the claimant had lost its case, Congress directed the court below "to reinstate and retry said case * * * upon the present pleadings, evidence, and findings of fact", with appeal to this Court. 304 U. S. at pp. 120-121. The claimant then went to the Court below and obtained judgment. *Id.* And in earlier cases neither this Court nor the court below has seen any constitutional defect in the exercise by Congress of its constitutional prerogative to pay the debts by providing for their reduction to judgment in a court. *Cherokee Nation* v. *United States*, 270 U. S. 476 (*res judicata* waived); *Roberts* v. *United States*, 92 U. S. 41 (permitted suit for additional compensation for carrying mail, not covered by contract).

In fact, this exercise of power of Congress has been so long continued that it is scarcely conceivable that everyone heretofore could have been mistaken as to its constitutional basis. There are set forth in the note [2] some of the more

[2] *Nock* v. *United States*, 2 C. Cls. 451 (res judicata waived); *Caldera Cases*, 15 C. Cls. 546 (res judicata waived); *Braden* v. *United States*, 16 C. Cls. 389 (defense that agents' acts of negligence were unauthorized, (waived); *Boudinot* v. *United States*, 18 C. Cls. 716, 728 (permits suit because of tort committed by defendant's officers); *Walton* v. *United States*, 24 C. Cls. 372 (permitted suit in tort for negligence of defendant's agents); *Palmer* v. *United States*, 26 C. Cls. 82 (statute of limitations waived);

important cases in which has been recognized or given effect the right of Congress to exercise its power with respect to the just obligations of the United States, to waive defenses, establish a rule of decision favorable to the claimant, or create a right of action in his favor.

The case of *United States* v. *Klein*, 13 Wall. 128, relied upon below, is wholly beside the point. Even if that case be regarded as in full vigor despite the *quaere* chargeable against it in the light of *Williams* v. *United States*, 289 U. S. 553, 562-563, still in that case Congress was not attempting to concede some right on the part of the United States, but to take a right from a citizen—and that as to a matter (pardon) with respect to which power was not lodged in Congress. Since the decision of the present case, the court below has ruled (*Menominee Indians* v. *United States*, unreported, No. 44298, decided February 7, 1944), "We think that the true reason for unconstitutionality of legislation, where it has been found in such cases [by which the court

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Murphy v. *United States*, 35 C. Cls. 494 (defense of unauthorized act waived); *Southern Railway* v. *United States*, 45 C. Cls. 322 (defense of unauthorized act waived); *Snare & Triest* v. *United States*, 46 C. Cls. 109, 50 C. Cls. 201 (permitted suit in tort); *Irby, Executor* v. *United States*, 57 C. Cls. 60, 63 (statute prescribed rule of decision for damages); *Export Oil Corporation* v. *United States*, 64 C. Cls. 342, 350 (res judicata waived); *Iowa Tribe* v. *United States*, 68 C. Cls. 585 (permitted tribal suit on oral promise of agents unratified by Congress); *Garrett* v. *United States*, 70 C. Cls. 304 (created right of action in favor of petitioner); *Butler Lumber Co.* v. *United States*, 73 C. Cls. 270, 289 (permitted suit to tort for unauthorized act of agent); *Alegek* v. *United States*, 74 C. Cls. 308 (created liability although there was no taking by United States); *Radel Oyster* v. *United States*, 78 C. Cls. 816 (permitted suit in tort for negligence of defendant's agent); *Edwards* v. *United States*, 79 C. Cls. 436, 447 (waived defense of accord and satisfaction); *Stubbs* v. *United States*, 86 C. Cls. 152 (permitted recovery for losses to silver fox farm and trading post business occasioned by extension of limits of a national park); *Ute Indians* v. *United States*, 45 C. Cls. 440 (permitted suit for land taken by United States "as if disposed of under the public land laws of the United States"); *Indians of California* v. *United States*, 98 C. Cls. 583, 599, cert. denied 319 U. S. 764 (permitted suit on unratified treaties with the United States).

below did not mean to include the *Klein* case], is in its deprivation of litigants of existing rights, rather than in its asserted attempted exercise by the legislature of judicial power." So here: If the parties are in dispute, as where the United States by retroactive legislation would seek to take the property—*i. e.*, the benefits of a judgment—from a litigant in express contradiction of the Fifth Amendment, then doubtless the court must decide the merits of the controversy. But if Congress has the power to confess judgment or consent to reopening a judgment, and the claimant is willing to accept that consent, it is no imposition upon anybody. The court must agree, since it has no vested interest of its own in the previous judgment; the executive (in the person of attorneys for the United States) must agree, since not the executive but Congress has power to speak for respondent in the matter.

Conclusion

The judgment of the Court of Claims should be reversed.

Respectfully submitted,

JOHN W. CRAGUN,
Amicus Curiae.

SUPREME COURT OF THE UNITED STATES.

No. 26.—October Term, 1944.

Allen Pope, Petitioner,
vs.
The United States.

On Writ of Certiorari to the Court of Claims.

[November 6, 1944.]

Mr. Chief Justice Stone delivered the opinion of the Court.

The question for decision is whether Congress exceeded its constitutional authority in enacting the Special Act of February 27, 1942, 56 Stat. 1122,[1] by which, "notwithstanding any prior determination" or "any statute of limitations", it purported to

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[1] "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That jurisdiction be, and the same is hereby, conferred upon the Court of Claims of the United States, notwithstanding any prior determination, any statute of limitations, release, or prior acceptance of partial allowance, to hear, determine, and render judgment upon the claims of Allen Pope, his heirs or personal representatives, against the United States, as described and in the manner set out in section 2 hereof, which claims arise out of the construction by him of a tunnel for the second high service of the water supply in the District of Columbia.

"Sec. 2. The Court of Claims is hereby directed to determine and render judgment at contract rates upon the claims of the said Allen Pope, his heirs or personal representatives, for certain work performed for which he has not been paid, but of which the Government has received the use and benefit; namely, for the excavation and concrete work found by the court to have been performed by the said Pope in complying with certain orders of the contracting officer, whereby the plans for the work were so changed as to lower the upper 'B' or 'pay' line three inches, and to omit the timber lagging from the side walls of the tunnel; and for the work of excavating materials which caved in over the tunnel arch and for filling such caved-in spaces with dry packing and grout, as directed by the contracting officer, the amount of dry packing to be determined by the Lamb method as described by the court and based on the volume of grout actually used, and the amount of grout to be [illegible] of cement used in the grout actually pressed into the dry packing.

"Sec. 3. Any suit brought under the provisions of this Act shall be instituted within one year from the date of the approval hereof, and the court shall [illegible]

[illegible]

confer jurisdiction on the Court of Claims to "hear and determine", and directed it to "render judgment" upon certain claims of petitioner against the Government in conformity to directions given in the Act.

Petitioner brought the present proceeding in the Court of Claims to recover upon his claims as specified and sanctioned by the Special Act. The court dismissed the proceeding on the ground that the Act was unconstitutional. 100 Ct. Cls. 375. It thought that in requiring the court to make a mathematical calculation of the amount of petitioner's claims upon the basis of data enumerated in the Act, and to give judgment for the amount so ascertained, notwithstanding the rejection of those claims in an earlier suit in the Court of Claims, the Act was an unconstitutional encroachment by Congress upon the judicial function of the court. Holding that it was free to ignore the congressional command because given without constitutional authority, the court gave judgment dismissing the proceeding.

The case comes here on petition for certiorari which assigns as error the ruling below that the Congressional mandate was without constitutional authority. Because of the importance of the questions involved we issued the writ, 321 U. S. 761. For reasons which will presently appear, we hold that we have jurisdiction to review the judgment below.

Several years before the enactment of the Special Act, petitioner brought suit in the Court of Claims to recover amounts alleged to be due upon his contract with the Government for the construction of a tunnel as a part of the water system of the District of Columbia. The construction involved certain excavation and certain filling of the excavated space, in part with concrete and in part with dry packing and grout. Dry packing consists of closely packed broken rock, into which is pumped the grout, a thin liquid mixture of sand, cement and water, which, when it hardens, serves to solidify and strengthen the dry packing. Included in the demands for which the suit was brought were certain claims which are now asserted in this proceeding. They comprise a claim for additional excavation and concrete work alleged to have been required because of certain orders of the contracting officer, and a claim for dry packing and grout furnished by petitioner and placed by him in certain excavated space outside the so-called "B" line shown on the contract drawings. The

"B" line marked the outer limits of the tunnel beyond which, by the terms of the contract, petitioner was not to be paid for excavation.

In the first suit it appeared that petitioner sought recovery for excavation, for which he had not been paid, of the space at the top of the tunnel where the contracting officer had lowered the "B" line by three inches, thus decreasing the space for the excavation for which the contract authorized payment to be made. The Court of Claims denied recovery of this item. The contracting officer had also directed the omission of certain timber supports or lagging required by the contract to be placed on the side walls of certain sections of the tunnel. Cave-ins from the sides resulted, making it necessary that the caved-in material be removed and that the resulting space be filled with concrete, all at increased expense to petitioner. The Court of Claims made findings showing the amount of the additional excavation and concrete work claimed, but denied recovery on these items because the order of the contracting officer for the additional work involved a change in the contract which was not in writing as the contract required.

The Court of Claims also denied petitioner's claim for dry-packing and grout. It was of opinion that the Government had received the benefit of and was liable for whatever dry packing petitioner had done and for so much of the grout as had actually found its way into the dry packed space and had remained there. But it denied recovery because of deficiency in the proof as to the extent of this space. The only proof offered was the "liquid method" of computation, based on the number of bags of cement used in the preparation of all the grout furnished by petitioner, the cement constituting a fixed proportion of the grout. The court held, with the Government, that the seepage of the grout into areas outside that dry packed rendered the liquid method an unreliable measure for determining either the volume of the dry packing or the amount of the grout required for it. The court gave judgment accordingly, while allowing to petitioner other claims upon his contract with which we are not here concerned. Petitioner's motions for a new trial were denied by the Court of Claims, and this Court denied certiorari. 303 U. S. 654.

The Special Act of Congress directed the Court of Claims to "render judgment at contract rates upon the claims" of peti-

tioner for "certain work performed for which he has not been paid, but of which the Government has received the use and benefit", and gave jurisdiction to this Court to review the judgment by certiorari. Section 2 of the Act defined the work to be compensated as

"the excavation and concrete work found by the court to have been performed by the said Pope in complying with certain orders of the contracting officer, whereby the plans for the work were so changed as to lower the upper 'B' or 'pay' line three inches, and as to omit the timber lagging from the side walls of the tunnel; and for the work of excavating materials which caved in over the tunnel arch and for filling such caved in spaces with dry packing and grout, as directed by the contracting officer, the amount of dry packing to be determined by the liquid method as described by the court and based on the volume of grout actually used, and the amount of grout to be as determined by the court's previous findings based on the number of bags of cement used in the grout actually pumped into dry packing."

The Act further directed that the court should consider as evidence in the case "any or all of the evidence" taken by either party in the earlier suit, "together with any additional evidence which may be taken".

The Court of Claims in construing the Special Act said (100 Ct. Cls. p. 379):

"A perusal of Section 2 of the act will show that the task which the court is directed to perform is a small and unimportant one. It is directed to refer to its previous findings, take certain cubic measurements and certain numbers of bags of cement which are recited there by reference, multiply those figures by the several unit prices stipulated in the contract for the several kinds of work, add the results and render judgment for the plaintiff for the sum. If this reading of Section 2 is correct, not only does the special act purport to confer upon the plaintiff the unusual privilege of litigating the same case a second time in a court which once finally decided it, and applying a second time for a review in the Supreme Court of the United States, which once considered and denied such a review. The special act also purports to decide the questions of law which were in the case upon its former trial and would, but for the act, be in it now, and to decide all questions of fact except certain simple computations."

So construed it thought the Special Act directed the Court of Claims to decide again the case or controversy which it had decided in the first suit, "to decide it for the plaintiff and give final judgment for an amount" determined by a "simple com-

putation, based upon data referred to in the Special Act." This it concluded Congress could not "effectively direct".

For this conclusion it relied upon *United States* v. *Klein*, 13 Wall. 128, in which this Court ruled that Congress was without constitutional power to prescribe a rule of decision for a case pending on appeal in this Court so as to require it to order dismissal of the suit in which the Court of Claims had given judgment for the claimant. Decision was rested upon the ground that the judicial power over the pending appeal resided with this Court, in the exercise of its appellate jurisdiction, and that Congress was without constitutional authority to control the exercise of its judicial power and that of the court below by requiring this Court to set aside the judgment of the Court of Claims by dismissing the suit.

As the opinion in the *Klein* case pointed out, pp. 144, 145, the Act of March 17, 1866, 14 Stat. 9, conferred on the Court of Claims judicial power by giving it authority to render final judgments in those cases and controversies which, pursuant to existing statutes, had been previously litigated before it. By later statutes this authority was extended to future cases and the Court has since exercised the judicial power thus conferred upon it. See *Ex parte Bakelite Corp'n*, 279 U. S. 438, 454; *United States* v. *Jones*, 119 U. S. 477. We do not consider just what application the principles announced in the *Klein* case could rightly be given to a case in which Congress sought, *pendente lite*, to set aside a judgment of the Court of Claims in favor of the Government and to require relitigation of the suit. For we do not construe the Special Act as requiring the Court of Claims to set aside the judgment in a case already decided or as changing the rules of decision for the determination of a pending case.

Before the Special Act the claims of petitioner on his contract with the Government had been passed upon judicially and merged in a judgment which was final. *United States* v. *Jones*, *supra*; *In re Sanborn*, 148 U. S. 222, 225; *Luckenbach S.S. Co.* v. *United States*, 272 U. S. 533, 536 *et seq.* This Court denied certiorari, and the judgment, which remains undisturbed by any subsequent legislative or judicial action, conclusively established that petitioner was not entitled to recover on his claims. The Special Act did not purport to set aside the judgment or to require a new trial of the issues as to the validity of the claims which the Court had resolved

against petitioner. While inartistically drawn the Act's purpose and effect seem rather to have been to create a new obligation of the Government to pay petitioner's claims where no obligation existed before. And such being its effect, the Act's impact upon the performance by the Court of Claims of its judicial duties seems not to be any different than it would have been if petitioner's claims had not been previously adjudicated there.

We perceive no constitutional obstacle to Congress's imposing on the Government a new obligation where there had been none before, for work performed by petitioner which was beneficial to the Government and for which Congress thought he had not been adequately compensated. The power of Congress to provide for the payment of debts, conferred by § 8 of Article I of the Constitution, is not restricted to payment of those obligations which are legally binding on the Government. It extends to the creation of such obligations in recognition of claims which are merely moral or honorary. *Roberts v. United States*, 92 U. S. 41; *United States v. Realty Company*, 163 U. S. 427; *United States v.* [illegible], 257 U. S. 523; *Cincinnati Soap Co. v. United States*, 301 U. S. 308, 314. Congress, by the creation of a legal, in recognition of a moral, obligation to pay petitioner's claims plainly did not encroach upon the judicial function which the Court of Claims had previously exercised in adjudicating that the obligation was not legal. Nor do we think it did so by directing that court to pass upon petitioner's claims in conformity to the particular rule of liability prescribed by the Special Act and to give judgment accordingly. *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 18 How. 421; *Roberts v. United States*, *supra*; see *Cherokee Nation v. United States*, 270 U. S. 476, 486; cf. *Klamath Indians v. United States*, 296 U. S. 244; *United States v. Klamath Indians*, 304 U. S. 119.

Congress having exercised its constitutional authority to impose on the Government a legally binding obligation, the decisive question is whether it invaded the judicial province of the Court of Claims by directing it to determine the extent of

The Court of Claims has often so held in other cases. See e. g. Nock v. United States, 2 Ct. Cls. [illegible]; Murphy v. United States, 14 Ct. Cls. [illegible], affirmed 104 U. S. 464, [illegible] [illegible] Ct. Cls. [illegible] United States [illegible]

the obligation by reference, as directed, to the specified facts, and to give judgment for that amount. In answering, it is important that the Act contemplated that petitioner should bring suit on his claims in the usual manner, that the court was given jurisdiction to decide it, and that petitioner by bringing the suit has invoked, for its decision, whatever judicial power the court possesses. Cf. *United States* v. *Realty Company*, *supra*. In this posture of the case it is pertinent to inquire what, if anything, Congress added to or subtracted from the judicial duties of the Court of Claims by directing that it consider the case and give judgment for the amount found to be due. Stripped of all complexities of detail the case is one in which, simply stated, petitioner has sought to enforce the obligation, which the Government has assumed, to pay him for work done and not paid for. Congress has in effect consented to judgment in an amount to be ascertained by reference to the specified data.

When a plaintiff brings suit to enforce a legal obligation it is not any the less a case of controversy upon which a court possessing the federal judicial power may rightly give judgment because the plaintiff's claim is uncontested or incontestable. Nor is it any the less so because the amount recoverable depends upon a mathematical computation based upon data to be ascertained which by the terms of the obligation are its measure. For in any case the court is called to pass sanction, by its judgment, on an alleged obligation in a proceeding in which the existence, validity and extent of the obligation, the existence of the data, and the correctness of the computation may be put in issue.

The court below seems to have assumed that its only function under the Special Act was to make a calculation based upon data to be found in the Act and in the findings of the earlier suit. In view of the provisions of the Special Act for taking evidence and for considering the evidence in the first suit, we cannot say that all the earlier findings are to be deemed conclusive, and that the court could not have been called on in this proceeding to determine judicially what they were. Whether the Act makes [illegible] and whether the evidence would establish the facts which the Act provides liability, are judicial questions. [illegible] be ascertained by proof or by stipulation, it is for the court, in the judicial function of determining whether there is a legally binding obligation and if so to give

judgment for the amount disclosed, though the amount depends upon more computation.

It is a judicial function and an exercise of the judicial power to render judgment on consent. A judgment upon consent is "a judicial act." *United States v. Swift*, 286 U. S. 106, 115; *Swift v. United States*, 276 U. S. 311, 324; see also *Pacific R.R. v. Ketchum*, 101 U. S. 289; *United States v. Babbitt*, 104 U. S. 767; *Nashville, Chattanooga & St. Louis Ry. v. United States*, 113 U. S. 261; *Thompson v. Maxwell Land Grant Co.*, 168 U. S. 451. It is likewise a judicial act to give judgment on a legal obligation which the court finds to be established by stipulated facts. *J. I. Case Co. v. Labor Board*, 321 U. S. 332, 333; *Johnson v. Yellow Cab Co.*, 321 U. S. 383, 388; *Equitable Society v. Comm'r*, 321 U. S. 560, 561; or when the defendant is in default. *Voorhees v. Bank of the United States*, 10 Pet. 449; *Randolph v. Barrett*, 16 Pet. 138; *Clements v. Berry*, 11 How. 398; *Cooper v. Reynolds*, 10 Wall. 308; *Rio Grande Irrigation Co. v. Gildersleeve*, 174 U. S. 603; *Fidelity and Deposit Co. v. United States*, 187 U. S. 315; *Christianson v. King County*, 239 U. S. 356, 372. It is a familiar practice and an exercise of judicial power for a court upon default, by taking evidence when necessary or by computation from facts of record, to fix the amount which the plaintiff is lawfully entitled to recover, and to give judgment accordingly. *Renner and Bussford v. Marshall*, 1 Wheat. 215; *Aurora City v. West*, 7 Wall. 82, 104; *Clements v. Berry*, *supra*; cf. *Manhow v. Thatcher*, 6 Wheat. 129. In all these cases the court determines that the unchallenged facts shown of record establish a legally binding obligation which adjudicates the plaintiff's right of recovery and the extent of it, both of which are essential elements of the judgment.

We conclude that the effect of the Special Act was to authorize petitioner to invoke the judicial power of the Court of Claims, and that he has done so. It is true that Congress has imposed on that court, as it has on the courts of the District of Columbia, nonjudicial duties of an administrative or legislative character. See *In re Sanborn*, *supra*; *Keim Mining Co. v. Nelson Co.*, 289 U. S. 266, 275. Those imposed on the Court of Claims are such as it has traditionally exercised since its original organization as a mere agency of Congress to aid it in the performance of its constitutional duty to provide for the payment of the debts of the Govern-

ment. Such administrative duties coexist with its judicial functions. See *Ex Parte Bakelite Corp'n, supra,* 452, *et seq.* Its decisions rendered in its administrative capacity are not judicial acts, and their review, even though sanctioned by Congress, is not within the appellate jurisdiction of this Court. *Gordon* v. *United States,* 2 Wall. 561; and see the views expressed by Taney, C. J., in 117 U. S. 697; *In re Sanborn, supra.* But notwithstanding the retention of such administrative duties by the Court of Claims, as in the case of the courts of the District of Columbia, Congress has provided for appellate review of the judgments of both courts rendered in their judicial capacity. And this Court has held by an unbroken line of decisions, that its appellate jurisdiction, conferred by Art. III, Sec. 2, Cl. 2 of the Constitution, extends to the review of such judgments of the Court of Claims; *De Groot* v. *United States,* 5 Wall. 419; *United States* v. *Jones, supra; Nashville C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 263; and of the courts of the District of Columbia; *Radio Comm'n* v. *Nelson Bros. Co., supra,* and cases cited.

We have no occasion to consider what effect the imposition of non-judicial duties on the Court of Claims may have affecting its constitutional status as a court and the permanency of tenure of its judges. Cf. *Williams* v. *United States,* 289 U. S. 553. It is enough that, although the Court of Claims, like the courts of the District of Columbia, exercises non-judicial duties, Congress has also authorized it as an inferior court to perform judicial functions whose exercise is reviewable here. The problem presented here is no different than if Congress had given a like direction to any district court to be followed as in other Tucker Act cases. Its possession of non-judicial functions by direction of Congress presents no more obstacle to appellate review of its judicial determinations by this Court than does the performance of like functions by the courts of the District of Columbia or by state courts whose exercise of judicial power, in the cases specified in Article III, Sec. 2, Cl. 1, of the Constitution, is reviewable here by virtue of [illegible] 2 of Sec. 2. Compare *S. W. Bell Tel. Co.* v. *Oklahoma,* [illegible] U. S. 206, with *B[illegible]* v. [illegible], 302 U. S. 655. See also [illegible] v. *Atlantic Coast L*[illegible], 211 U. S. 210, 225, 226; *Okla. Gas* [illegible], 261 U. S. 290.

[illegible] Court of Claims' determination that the Special Act con[illegible] upon it only non-judicial functions and hence that it had

no judicial duty to perform was itself an exercise of judicial power reviewable here. *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447. The case is not one where the court below has made merely an administrative decision not subject to judicial review, without purporting to act judicially or to rule as to the extent of its judicial authority as the ground of its action or refusal to act. *Postum Cereal Co.* v. *Calif. Fig Nut Co.*, 272 U. S. 693. Jurisdiction to decide is jurisdiction to make a wrong as well as a right decision. *Faudleroy* v. *Lum*, 210 U. S. 230, 234, 235; *Bowles* v. *Alexander*, 326 U. S. 445, 447.

Reversed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.